

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2017-05

June 29, 2017

HARCOURT PERSONNEL INC.

Case File Number P2733

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that Harcourt Personnel Inc. (the Organization) collected, used and/or disclosed his personal information in contravention of the *Personal Information Protection Act* (the Act) when it received a copy of his Worker's Compensation file and provided it to its lawyer and was subsequently used in an Affidavit filed in a civil claim.

The Adjudicator found that the Organization had the authority to collect, use and/or disclose the information in the Complainant's WCB file pursuant to sections 14, 17, 19, and 20 of the Act.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss.1, 7, 11, 16, 14, 15, 17, 18, 19, 20, 21, and 52 and *Workers' Compensation Act*, R.S.A. 2000, c. W-15.

I. BACKGROUND

[para 1] According to the Organization, the Complainant was an employee of Harcourt Personnel Inc. (the Organization) until January 15, 2014. On January 27, 2014, the Complainant submitted a Workers' Report of Injury Form to the Workers' Compensation Board (WCB) for an injury that he states occurred during his employment with the Organization. On January 31, 2014, the Complainant was advised by the WCB that his

injury would not be covered because the Organization was in an exempt industry and did not have WCB coverage.

[para 2] On February 3, 2014, the Organization filed a Statement of Claim naming the Complainant as a defendant. The claim stated the Complainant breached his employment contract with the Organization in various ways (the civil claim).

[para 3] The Complainant sent a General Information Questionnaire, Workers' Report and Fax cover sheet to the WCB on March 10, 2014, naming the Organization as the employer. On that same day, the WCB advised the Organization that the Complainant had made a WCB claim.

[para 4] According to a letter from the WCB to the Complainant dated May 14, 2014, on March 27, 2014, the Complainant called the WCB and advised because his pay cheques were issued by a staffing agency (not the Organization), that agency might have been his employer (the Organization confirmed that the staffing agency is a payroll company and was not the Complainant's employer).

[para 5] A fax cover sheet from the Complainant to WCB dated April 8, 2014 states that on March 28, 2014, the Complainant contacted the Organization and advised them that because it was a temporary staffing agency it was required to have WCB coverage.

[para 6] According to the Organization, the WCB advised that a copy of the Complainant's WCB file could be requested by the Organization using a form that contained an agreement that the Organization not use the information in the file for anything other than the limited purposes listed. The Organization submitted this form and the WCB provided its file to the Organization on March 31, 2014.

[para 7] According to a letter from the WCB to the Complainant dated May 14, 2014, on April 8, 2014, the Complainant contacted the WCB and stated that he had been told previously that if the Organization employed temporary workers it was to have WCB coverage and that he was told he should email the Organization advising them of this and get back to the WCB if he did not get a reply. On April 9, 2014, the WCB contacted the Complainant and informed him that the Organization was not required to have WCB coverage.

[para 8] The Organization provided this information to the lawyer representing it in the civil claim. Information from the WCB file appeared as exhibits attached to an Affidavit relating to the civil claim which was filed with the Court on April 17, 2014. On April 23, 2017, the WCB sent a letter to the Organization advising that the Affidavit breached the agreement signed by the Organization and asking that all documents be returned to the WCB. According to the Organization, acting on the recommendations of the Senior Information and Privacy Manager employed by this Office, it did eventually return the information to the WCB.

[para 9] On May 14, 2014, the WCB advised the Complainant that it had conducted a review of the disclosure of the Complainant's information to the Organization and found that because the Organization was not subject to the *Workers' Compensation Act* (WCA) that the information should not have been disclosed to the Organization by the WCB.

[para 10] According to the Organization, during this time the Complainant also made a complaint to the Human Rights Commission and Employment Standards.

[para 11] On May 20, 2014, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner (this Office). Mediation was authorized but was not successful in resolving the issues between the parties and on January 13, 2016, this Office received a Request for Inquiry from the Complainant. I received submissions from both parties.

II. ISSUES

[para 12] The Amended Notice of Inquiry dated October 26, 2016 states the issues in this inquiry as follows:

1. Did the Organization collect, use and/or disclose "personal information" of the Complainant as that term is defined in section 1(1)(k) of the Act?
2. If the answer to question 1 is yes, did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

Did the Organization have the authority to collect, use and/or disclose the personal information without consent as permitted by sections 14, 17 or 20 of PIPA?

3. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?
4. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?
5. Did the Organization collect, use and/or disclose "personal employee information" of the Complainant as that term is defined in section 1(1)(j) of the Act?
6. If the answer to question 5 is yes, did the Organization disclose the "personal employee information" in contravention of, or in compliance with, section 7(1) of

PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

Did the Organization have the authority to collect/use/disclose the information without consent as permitted by sections 15, 18 and 21 of PIPA?

III. DISCUSSION OF ISSUES

1. Did the Organization collect, use and/or disclose "personal information" of the Complainant as that term is defined in section 1(1)(k) of the Act?

[para 13] Personal Information is defined by section 1(1)(k) of the Act as follows:

1(1)(k) "personal information" mean information about an identifiable individual.

[para 14] In its initial submissions, the Organization concedes that information in the WCB records it received on March 31, 2014 was the Complainant's personal information. I agree.

2. If the answer to question 1 is yes, did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?

[para 15] Section 7(1) of the Act states:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,

(a) collect that information unless the individual consents to the collection of that information,

(b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,

(c) use that information unless the individual consents to the use of that information, or

(d) disclose that information unless the individual consents to the disclosure of that information.

[para 16] There is no evidence and neither party argues that the Complainant consented to the collection, use and/or disclosure of his personal information to the Organization. Therefore, I find that the Complainant did not consent to the collection, use and/or disclosure of his personal information by the Organization. That being said, the Organization can still have the authority to collection, use, and/or disclose an individual's

personal information without consent pursuant to sections 14, 17, and 20 of the Act, which I will examine below.

a. Collection (section 14 of the Act)

[para 17] As outlined above, the Organization collected the Complainant's personal information on March 31, 2014 from the WCB (a public body). At the time of the collection the Organization and Complainant were engaged in active civil litigation. There also appears to have been an unresolved issue with the Complainant's WCB claim, and possibly human rights and employment standards claims (though I do not have many details about these latter claims). Therefore, the portions of section 14 of the Act relevant to this inquiry state:

14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable:

...

(c) the collection of the information is from a public body and that public body is authorized or required by an enactment of Alberta or Canada to disclose the information to the organization;

...

(d) the collection of the information is reasonable for the purposes of an investigation or a legal proceeding;

[para 18] The Complainant argues that the Organization collected his personal information under false pretenses (in order to further its litigation and not to manage his disability claim) and that there was no reason for the WCB to release the information given that there was no WCB coverage. Specifically, he states:

The only reason that [the Organization] would have collected this information was in pursuit of information for his litigation against me. The WCB clearly stated that there was no coverage at the time [the Organization] requested the file, and as per the WCB, there was no reason for the file to be released. Clearly the intent of the [Organization and its lawyer] was to use this information specifically in their litigation. As such they obtained the file containing my personal information under false pretenses, (claiming they needed it for the management of my disability claim) and immediately used it in the litigation, and threatened to request more medical information. Even when contacted by the WCB they failed to respond, and advised my counsel they would seek board approval to use this information.

(Complainant's initial submission at page 2)

[para 19] The Organization argues that it was authorized to collect the Complainant's personal information pursuant to section 14(d) of the Act. It states:

As a result of [the Complainant's WCB claim], the WCB contacted the Organization to confirm the details of the situation. A representative of the WCB informed the

Organization that, as they were the subject of a complaint, they were entitled to know what the details of the complaint against them were. They informed the Organization of the appropriate form to fill out in order to properly address these complaints. The Organization submitted the requested form and was faxed a copy of the complaint against the Organization on March 31, 2014.

(Organization's initial submissions at page 2)

[para 20] The Organization further states:

In seeing the WCB documents, the Organization discovered that the Complainant had made many highly defamatory statements against both the Organization and its owners. The Organization believed that it needed to correct and defend itself from the actions of the Complainant's reprisal for being served with the allegation of breach of contract and fiduciary duty and the related Order for an injunction, and shared this with our legal counsel for the existing legal case for their advice on how to proceed.

(Organization's initial submissions at page 2)

[para 21] To begin, whether the WCB had the authority to disclose the Complainant's information is determinative only insofar as section 14(c) of the Act is concerned. The submissions of the Complainant show that the WCB decided it had not had the authority under the WCA to disclose the Complainant's personal information to the Organization at the time it had disclosed it (even though at the time it believed it did have such authority). The WCA is the home statute of the WCB and I trust that its determination in this regard was reasonable. Therefore, I do not believe that section 14(c) of the Act applies to this inquiry.

[para 22] That leaves section 14(d) of the Act, which allows an organization to collect personal information without consent when it is reasonable for the purpose of an investigation or legal proceeding. The arguments of the Organization on this point indicate that the investigation or legal proceeding it collected the information for was the Complainant's WCB claim and not for the civil action. Legal proceeding is defined by section 1(1)(g) of the Act as follows:

1(g) "legal proceeding" means a civil, criminal or administrative proceeding that is related to

(i) a breach of an agreement,

(ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or

(iii) a remedy available at law;

[para 23] The WCB is an administrative tribunal that applies the *Workers' Compensation Act* (WCA) and awards workers benefits for workplace accidents on a no-fault basis. In accordance with the WCA, it must determine if a worker is covered by the

WCA, if a compensable injury has occurred, and the amount of the benefit to be paid. Therefore, a WCB claim is a legal proceeding as defined with section I(1)(g) of the Act because it is an administrative proceeding related to a remedy available at law.

[para 24] The Complainant believes that despite its stated purpose for collection, the actual purpose for the Organization's collecting the Complainant's personal information is that it wanted it for its civil claim and not the WCB claim. As evidence of this, the Complainant points to the use the Organization made of the information in including it in an Affidavit and the fact that the Organization signed a form saying it would only use the information to, "facilitate return to work planning, understand progress of medical and vocational rehabilitation and decision made by the WCB" or "contemplate and/or advance a Review before the Dispute Resolution and Decision Review Body or Appeal before the Appeals Commission."

[para 25] I do not believe that the use the Organization put the information to is determinative of the reason it collected the information. At the time of the collection, the Organization did not know the specifics of what the Complainant had said to the WCB. In particular, its submissions state that it was only after reviewing the WCB file that it learned that the Complainant had said things it regarded as defamatory. There is nothing in the Complainant's submissions or in the letter from the WCB which outlined the things that happened in advance of the disclosure to the Organization that indicate that the Organization was made aware of these statements prior to requesting the file. Therefore, I do not believe that the use that was made of the information (which I will deal with below) proves on a balance of probabilities that the Organization's purpose in collecting the information was for the civil litigation.

[para 26] Further, I do not believe that the fact that the WCB put a restriction on how the information was to be used means that the Organization's purpose in collecting the information was for the purpose of a civil action. In this regard the Complainant's argument relates more to the use made of the information and not the reason for the collection. I will deal with the latter below.

[para 27] Finally, the Complainant states that the Organization was told by the WCB at the time of the Organization's request to the WCB that the Organization was not subject to the WCA, and therefore there was no reason for the Organization to collect the file for the purposes of the WCB claim. While this may be true, as noted above, the Complainant contacted the Organization on March 28, 2014 (before the Organization collected the Complainant's personal information) to advise the Organization that he believed the Organization ought to have WCB coverage. He then followed up with the WCB on this same point in April, before being told, again, that the Organization did not require WCB coverage. So, while the WCB seemed to believe that the matter had been dealt with in January of 2014 when it first denied the Complainant's claim, he continued to pursue the matter, which required the WCB to contact the Organization.

[para 28] I think, given these circumstances, that it was reasonable for the Organization to believe that there was an ongoing issue with the Complainant's WCB claim.

Therefore, I find that the Organization's purpose in collecting the Complainant's personal information was for the WCB claim and that it was reasonable for the purposes of this claim. As a result, I find that the Organization was authorized to collect the Complainant's personal information pursuant to section 14(d) of the Act.

b. Use/Disclosure (sections 17/20 of the Act)

[para 29] After collecting the Complainant's personal information from the WCB, the Organization provided it to its legal counsel. This could possibly be regarded as a disclosure because it was provided to an individual outside of the Organization. However, given the solicitor-client relationship involved and the fact that legal counsel is acting on behalf of its client, it is possible that this could also be viewed as a use of the Complainant's personal information. In addition to providing the information to legal counsel, the Organization also swore an Affidavit that was (presumably at its instruction) filed in court and provided to the parties in the civil claim. In any event, I will not make a determination as to whether this was a use or a disclosure and instead make finding on both.

[para 30] The Complainant argues that the use/disclosure of his personal information was improper because it was done for purposes that were not listed in the form signed by the Organization and that it did not return the information when it was initially requested to do so by the WCB. The Complainant states:

As such, it is my submission that they intentionally collected this confidential information from the WCB (and allegedly attempted to with their insurer), knowingly used it for a prohibited purpose, and failed to cease and desist and return the information when legally requested to. Finally, they made no attempt to mitigate the damage caused by their willful violation of the privacy of my information, or the extensive costs associated with the breach.

(Complainant's initial submission at page 2)

[para 31] The Organization argues that it used/disclosed the information to its legal counsel for the purpose of getting legal advice. It states:

In seeing the WCB documents, the Organization discovered that the Complainant had made many highly defamatory statements against both the Organization and its owners. The Organization believed that it needed to correct and defend itself from the actions of the Complainant's reprisal for being served with the allegation of breach of contract and fiduciary duty and the related Order for an injunction, and shared this with our legal counsel for the existing legal case for their advice on how to proceed.

(Organization's initial submissions at page 2)

[para 32] On April 4, 2014, the Organization's legal counsel sent a letter to the Complainant's legal counsel indicating that the Complainant's claims to the WCB were made in retaliation for the Statement of Claim regarding his alleged breach of contract and stating that on the basis of the information in the WCB file, the Statement of Claim in

the civil claim would be amended to include a claim for defamation. On April 17, 2014, the Organization swore and filed an Affidavit including this information in its civil claim. After this, according to the Organization, the WCB advised the Organization it had used the information in contravention of the intended use and so the Affidavit was revised to not include this information.

[para 33] Based on the arguments of the parties, the relevant portions of sections 17 and 20 state:

17 An organization may use personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

...

(d) the use of the information is reasonable for the purposes of an investigation or a legal proceeding;

...

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

...

(m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding;

[para 34] The Organization states that the use/disclosure was made for the purposes of the civil claim. The civil claim was for breach of the employment contract but there was also an application made for an interim injunction asking that the Complainant and other defendants stop disclosing confidential information of the Organization.

[para 35] Indeed, it appears that the Organization was in violation of the WCB's conditions regarding the use of the information when it used/disclosed the Complainant's personal information for the purposes of advancing the civil claim or adding a new claim of defamation to the existing civil claim. That being said, it is within the WCB's jurisdiction to enforce its own agreements. The fact that the agreement was breached is not determinative of whether the Organization had or did not have authority under section 17(d) and 20(m) of the Act to use/disclose the Complainant's personal information.

[para 36] Both the civil claim and the defamation claim would be considered legal proceedings as defined in section 1(1)(g) of the Act because there is a remedy in law for both breach of contract and defamation. It is clear from all of the information before me that the relationship between the Complainant and the Organization was acrimonious and that each party viewed the actions of the other as retaliation for one thing or another. Therefore, particularly given the relationship between the Organization and the Complainant, I believe that the use/disclosure of this information to legal counsel and as part of an Affidavit in support of a defamation claim was reasonable for the purpose of the legal proceeding.

3. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?

[para 37] Sections 11(1), 16(1), and 19(1) of the Act require that an organization may only collect/use/disclose personal information for purposes that are reasonable.

[para 38] I have found that the collection/use/disclosure of the Complainant's personal information was done for the purposes of a legal proceeding. I find that defending or advancing a legal proceeding is a reasonable purpose.

4. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?

[para 39] Section 11(2), 16(2), and 19(2) of the Act require an organization to collect/use/disclose personal information only to the extent that is reasonable for meeting the purposes for which it was collected/used/disclosed.

[para 40] Regarding the collection of the Complainant's personal information, the Organization collected the information that the Complainant had provided to the WCB in order to advance a claim for compensation. I have found that the purpose for the collection was to defend against a possible claim that the Complainant was attempting to make for coverage. In this regard, the information collected (including the basis for the Complainant's claim and his position regarding the Organization's requirement for coverage) was reasonable because this is the information the Organization would need to know to mount a defense if necessary.

[para 41] I found that the Organization's purpose for the use/disclosure of the Complainant's personal information was the advancement of the civil claim as well as to advance a defamation claim. The Organization provided all the information it received from the WCB to its legal counsel in order to get advice on its legal options. I believe that it was reasonable for the Organization to provide its legal counsel with all of the information so that counsel could properly advise its client. As well, I find that it was reasonable for the information to be included in the Affidavit as it was the position of the Organization that the WCB claim was made as retaliation for the civil claim.

5. Did the Organization collect, use and/or disclose "personal employee information" of the Complainant as that term is defined in section 1(1)(j) of the Act?

[para 42] Section 1(1)(j) of the Act defines "personal employee information" as follows:

1(1)(j) "personal employee information" means, in respect of an individual who is a potential, current or former employee of an organization, personal information reasonably required by the organization for the purposes of

(i) establishing, managing or terminating an employment or volunteer-work relationship, or

(ii) managing a post-employment or post-volunteer-work relationship

between the organization and the individual, but does not include personal information about the individual that is unrelated to that relationship;

[para 43] As I have found that the Organization had authority under the Act to collect, use and/or disclose the information as personal information, there is no need for me to consider if the Organization was also authorized to do so as personal employee information.

- 6. If the answer to question 5 is yes, did the Organization disclose the "personal employee information" in contravention of, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,**

Did the Organization have the authority to collect/use/disclose the information without consent as permitted by sections 15, 18 and 21 of PIPA?

[para 44] Given my finding above, I will not make a finding regarding this issue.

IV. ORDER

[para 45] I make this Order under section 52 of the Act.

[para 46] I find that the Organization was authorized to collect, use and/or disclose the Complainant's personal information by sections 14, 17, 19, and 20 of the Act.

Keri H. Ridley
Adjudicator